

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARAMISS JEREL MOORE,

Defendant.

Case No. 3:18-cr-00030-MMD-CBC-1

ORDER

**I. SUMMARY**

Police found a gun and some ammunition in a motel room they thought Defendant Aramiss Jerel Moore was staying in following a warrantless search under Defendant's parole agreement. Defendant was subsequently indicted on two counts: (1) felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2); and (2) felon in possession of ammunition in violation of 922(g)(1) and 924(a)(2). (ECF No. 1.) Before the Court are Defendant's motions to suppress the gun and the ammunition upon which his indictment is based (ECF No. 26) (the "Motion to Suppress Evidence"), and any statements he made to officers after they handcuffed him, where they did not first read him his *Miranda* rights (ECF No. 27) (the "Motion to Suppress Statements") (collectively, the "Motions").<sup>1</sup> The Court held an evidentiary hearing on February 7, 2019 ("Hearing"). (ECF No. 44.) As discussed below, the Court will grant Defendant's Motion to Suppress Statements because the statements were obtained in violation of his *Miranda* rights, and will also grant Defendant's Motion to Suppress Evidence because an officer of reasonable

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<sup>1</sup>The government filed responses (ECF Nos. 28, 29) to which Defendant replied (ECF Nos. 31, 32).

1 caution would not have believed that Defendant resided in room 103 of the Sundance  
2 Motel.

## 3 **II. FACTUAL FINDINGS<sup>2</sup>**

4 The following facts are taken from the testimony provided at the Hearing as well  
5 as the evidence accompanying the Motions.<sup>3</sup>

6 Around the end of August and into September 2017, the FBI Safe Streets  
7 Taskforce was surveilling a suspected drug dealer at the Capri Motel and the vicinity,  
8 which included the motel across the street—the Sundance Motel—in Reno, Nevada (the  
9 “Motel”). In connection with that surveillance, Taskforce officers saw a female entering  
10 and exiting room 103 of the Motel (“Room 103”). Officers consistently testified at the  
11 Hearing that other officers on-scene at the Motel saw this female exit Room 103 about  
12 twenty minutes before the remainder of the events described below. Further, a  
13 subsequent inquiry with the Motel’s management indicated Room 103 was registered to  
14 a female (not Defendant), who had checked in on August 31, 2017.

15 On September 21, 2017, police officers arrested the suspected drug dealer they  
16 had been looking for, a person other than the female registered to Room 103 and  
17 Defendant. (ECF No. 26-1 at 20.) Nonetheless, their investigation continued—and they  
18 remained interested in Room 103. One of the officers involved, Washoe County Sheriff’s  
19 Deputy George Cholico, testified at the Hearing that Room 103 was among the rooms  
20 under surveillance for approximately a month, and that they saw others who were  
21 believed to be involved with the suspected drug activity going in and out of Room 103 of  
22 the Motel, but none of them ever directly saw Defendant enter or exit Room 103.

23 Around six p.m. on September 21, 2017, those same police officers saw a black,  
24 adult male near the Motel—Defendant—who the officers thought was another person

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25 <sup>2</sup>Fed. R. Crim. P. 12(d) provides: “Where factual issues are involved in determining  
26 a motion, the court must state its essential findings on the record.”

27 <sup>3</sup>The citations are to exhibits the parties submitted with their briefs, as well as an  
28 exhibit (Exhibit 1) that the Court admitted at the Hearing.

1 involved in the drug dealing they had been investigating. (*Id.* at 9-13.) One police officer,  
2 Drug Enforcement Agency (“DEA”) Special Agent DellaVolpe, told another officer who  
3 was just arriving at the Motel in a car, Deputy Cholico, that he had seen Defendant leaving  
4 Room 103, though it turned out he had only seen him somewhere near Room 103.<sup>4</sup> (ECF  
5 No. 27-1 at 7.) Cholico testified at the Hearing that several officers were present at the  
6 Motel when he arrived, and one of them pointed toward Defendant (who had exited the  
7 Motel as they were driving in) and indicated Cholico should follow and arrest him. Cholico  
8 was in an unmarked police car with another Taskforce officer, Russ Fonoimoana. (ECF  
9 No. 27-2 at 2.) They were both wearing clothing with the word “Police” written on it. (*Id.*)  
10 While Defendant was walking down the sidewalk away from the Motel—about a block  
11 from the Motel—Cholico and Fonoimoana pulled up near him in their car. Cholico yelled  
12 out the window to Defendant, “Hey,” and “Can we talk to you for a minute?” (ECF No. 26-  
13 1 at 15.)

14 Defendant stopped, looked at them, dropped a small plastic item behind him, and  
15 began to quickly walk away. (*Id.* at 16-17.) In response, Cholico pulled their car over.  
16 Fonoimoana jumped out of the car, pointed his gun at Defendant, and warned Defendant  
17 not to move. (ECF No. 27-2 at 3.) After walking a few more steps away, Defendant  
18 complied. Fonoimoana handcuffed Defendant and patted him down. (*Id.*) Fonoimoana  
19 noticed an unusual bulge in Defendant’s pants, which were either one or two copies<sup>5</sup> of  
20 keys to Room 103—actual, metal keys, attached to relatively large, plastic, diamond-  
21 shaped key fobs with ‘103’ written on them. (ECF No. 26-1 at 18; see *also* ECF No. 26-2

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23 <sup>4</sup>Cholico’s original police report stated that DEA Special Agent DellaVolpe told  
24 Cholico and Fonoimoana that he saw Defendant exiting Room 103. (ECF No. 26-1 at 5.)  
25 However, Cholico later filed a supplement that stated DellaVolpe was told by DEA Special  
Agent Michael Kellerman that he had seen Defendant in the vicinity of Room 103. (*Id.* at 7.)

26 <sup>5</sup>Cholico and Fonoimoana provided conflicting testimony at the Hearing as to  
27 whether Defendant had one or two keys on him, and Evans was unsure in his testimony  
28 at the Hearing whether one or two keys were found on Defendant.

1 at 3.) Fonoimoana and Cholico testified at the Hearing that they could not remember  
2 exactly what these keys looked like, but remembered that the keys did not say "Sundance  
3 Motel" on them.

4 Meanwhile, Cholico went and found the plastic object he had seen Defendant drop.  
5 (ECF No. 26-1 at 17.) It was a small plastic baggie containing a white, powdery substance.  
6 (*Id.*) Cholico knew from his training and experience the bag contained some type of drug.  
7 (*Id.*)

8 Without first reading him his *Miranda* rights,<sup>6</sup> Cholico and Fonoimoana questioned  
9 Defendant. (*Id.* at 18.) They asked him about the contents of the plastic bag. Defendant  
10 eventually conceded the bag contained cocaine, but said it was for personal use. (*Id.* at  
11 5.) Defendant also said in response to questioning that he had been *visiting* his girlfriend,  
12 who was staying in Room 103. (*Id.* at 21; *see also* ECF No. 27-2 at 3.) Further, Defendant  
13 said he had recently been released from prison, and was coming down from a  
14 methamphetamine high. (ECF No. 27-2 at 3.)

15 Cholico and Fonoimoana ran a warrant search on Defendant. (*Id.*) They learned  
16 there was a warrant out for his arrest because he had absconded from parole. (*Id.*) More  
17 specifically, he had been paroled earlier that summer from a sentence he was serving  
18 with the Nevada Department of Corrections, following a felony conviction for selling drugs  
19 obtained against him in state court in Washoe County, Nevada. (ECF No. 26-2 at 3.) The  
20 Nevada State Department of Public Safety ("Nevada Parole"), who was responsible for  
21 Defendant's parole, agreed that a parole officer in California could oversee Defendant's  
22 parole because Defendant was from Sacramento, California, and wanted to return there.  
23 (*Id.*) But Defendant was responsible for making parole arrangements in California, and  
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26 <sup>6</sup>Cholico and Fonoimoana both testified at the Hearing that they did not first read  
27 Defendant his *Miranda* rights.  
28

1 never did.<sup>7</sup> (*Id.*) At some point, Nevada Parole contacted the California parole authorities,  
2 who said that Defendant never reported to them, and they did not know where he was.  
3 (*Id.*) Therefore, in mid-September 2017, Nevada Parole issued a Parole Retake Warrant  
4 indicating that Defendant should be arrested and brought to jail if he was ever  
5 apprehended. (*Id.*)

6 Both because of the Parole Retake Warrant and the baggie of drugs they found on  
7 his person, Cholicco and Fonoimoana arrested Defendant and took him to the Washoe  
8 County Jail. (ECF No. 26-1 at 5.) At the jail, Defendant allegedly told the officers that he  
9 lived in Sacramento, and could not provide a local address. (ECF No. 26-2 at 3.) Nevada  
10 Parole's report on these incidents also provides a Sacramento address for Defendant.  
11 (*Id.* at 2.) But Officer Cholicco testified at the Hearing that Defendant provided him with the  
12 address 850 N. Virginia St., Reno, Nevada when he was filling out the probable cause  
13 form at the jail—which is the address of the Motel.<sup>8</sup>

14 Around 6:47 p.m., or just after Cholicco and Fonoimoana took Defendant to jail,  
15 Nevada Parole Officer Evans got a call informing him that Defendant had been arrested.  
16 (*Id.* at 3.) The officer who called Evans also gave Evans the phone number of Officer  
17 Kaylor, who was still on-scene at the Motel. Evans called Kaylor, who said Defendant had  
18 been seen (by someone else) leaving Room 103. (*Id.*) Kaylor also said someone else had  
19 spoken with the Motel manager, who reported seeing Defendant around the Motel for the  
20 couple of weeks leading up to that day—September 21, 2017. (*Id.*) Further, Evans

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23 <sup>7</sup>Nevada Parole Officer Aaron Evans testified that Defendant was permitted to  
24 serve his parole in California pursuant to an interstate compact. Evans also testified that  
25 Defendant was subject to the conditions of parole imposed by Nevada Parole as stated  
in his parole agreement ("Parole Agreement") (ECF No. 29-1 (same as Exhibit 1 to  
Hearing)), and any additional conditions that California may impose.

26 <sup>8</sup>Officer Cholicco was not sure at the Hearing if this address was the address of the  
27 Sundance Motel, but the Court takes judicial notice of the fact that it is because it is  
28 generally known within the Court's territorial jurisdiction. See Fed. R. Evid. 201. At the  
Hearing, the parties also did not dispute that this is the Motel's address.

1 testified at the Hearing that Kaylor told him on the phone Defendant was from  
2 Sacramento.

3 Evans drove over to the Motel. (*Id.*) He spoke with the Motel manager, who lived  
4 in Room 104, right next to Room 103. (*Id.*) The Motel manager told Evans that Room 103  
5 was registered to a female who had been there since August 31, 2017. (*Id.*) The Motel  
6 manager also told Evans that Defendant was not registered to Room 103. (*Id.*) Further,  
7 Evans asked the Motel manager if Defendant had been spending the night in Room 103,  
8 and the Motel manager said no—he never lets un-registered guests stay the night at the  
9 Motel. (*Id.*) But Evans indicated at the Hearing that the Motel’s clientele are often  
10 transient, it was not uncommon for them to have family and friends stay over, and that he  
11 did not think the Motel manager was always sure who was coming and going. Evans  
12 testified that he considered the information he received from the Motel manager, but he  
13 reached his own conclusion.<sup>9</sup>

14 Despite his conversation with the Motel manager, Evans decided to search Room  
15 103 without a warrant because he determined that getting a warrant was unnecessary.  
16 Evans understood that Defendant was subject to the Parole Agreement (ECF No. 29-1)  
17 which contained the following provision: “**Search:** You shall submit your person, property,  
18 place of residence, vehicle or areas under your control to search at any time, with or  
19 without a search warrant or warrant of arrest, for evidence of a crime or violation of parole  
20 by the Division of Parole and Probation or its agent.” (*Id.* at 2.). Evans wrote the reasons  
21 he decided to search Room 103 without a warrant in his report: “Due to Mr. Moore being  
22 seen repeatedly at room #103, not having a local address, and having both keys on his  
23 person at the time of arrest, I determined that room #103 was likely an area under his  
24 control and it was reasonable to believe that he was residing there.” (ECF No. 26-2 at 3-  
25 4.)

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26  
27 <sup>9</sup>Evans testified that he also talked to the staff person who worked in the Motel’s  
28 office, but was not able to obtain any clear information from that person as to whether  
Defendant rented Room 103.

1 One of the other officers on scene used a key taken from Defendant by Cholico  
2 and Fonoimoana earlier in the evening to open the door and enter Room 103. (*Id.* at 4.)  
3 Cholico and Evans testified at the Hearing that one of these other officers had previously  
4 tested this key in the lock of Room 103, and confirmed that it worked.

5 In Room 103, Evans found “a couple of bags of suspected marijuana, a marijuana  
6 pipe, a hypodermic needle and a digital scale among other personal effects.” (*Id.*) He also  
7 found a box of ammunition on the headboard of the bed, more ammunition in the drawer  
8 of the nightstand, and a gun under a pillow on the side of the bed closer to the nightstand  
9 containing some of the ammunition. (*Id.*)

10 Defendant was charged with two counts—felon in possession of a firearm, and  
11 felon in possession of ammunition—based on the gun and the ammunition found in Room  
12 103. (ECF No. 1.)

### 13 **III. DISCUSSION**

#### 14 **a. Motion to Suppress Statements**

15 Defendant seeks to suppress his statements to Cholico and Fonoimoana, along  
16 with any other officer present at his arrest, because they interrogated him without first  
17 reading him his *Miranda* rights. (ECF No. 27 at 4-5.) The government concedes that  
18 Defendant was in custody and not read his *Miranda* rights, and therefore does not oppose  
19 the suppression of his statements regarding his possession of a controlled substance,  
20 and states it will not rely on them in its case in chief. (ECF No. 28 at 1.) However, the  
21 government further argues the Court should not suppress Defendant’s statements made  
22 during this same conversation to the effect he was visiting his girlfriend in Room 103  
23 because they can be considered biographical information. (*Id.*) Defendant replies that the  
24 officers were interrogating Defendant, so any statements he made about Room 103 are  
25 not biographical information, and, in any event, Defendant never told officers he was  
26 staying in Room 103. (ECF No. 32 at 2-3.)



1 Fifty years ago, in *Miranda v. Arizona*, 384 U.S. 436, 439 (1966), the Supreme  
2 Court adopted certain procedural safeguards to ensure that an individual who is  
3 “subjected to custodial police interrogation . . . is accorded his privilege under the Fifth  
4 Amendment to the Constitution not to be compelled to incriminate himself.” Absent those  
5 safeguards, the government may not use statements obtained from a “custodial  
6 interrogation.” *Id.* at 444. Those safeguards include the “now familiar *Miranda* warnings .  
7 . . . or their equivalent.” *Rhode Island v. Innis*, 446 U.S. 291, 297 (1980) (quoting *Miranda*,  
8 384 U.S. at 479). Thus, *Miranda* warnings are mandated where an individual was in  
9 custody and subject to interrogation. Because there is no dispute that Defendant was in  
10 custody, the Court will address whether he was subject to interrogation.

11 For purposes of *Miranda*, “interrogation” includes both express questioning as well  
12 as “any words or action on the part of the police (other than those normally attendant to  
13 arrest and custody) that the police should know are reasonably likely to elicit an  
14 incriminating response from the suspect.” *Innis*, 446 U.S. at 301. The Supreme Court has  
15 held that “interrogation” encompasses even those questions that are routine in nature  
16 when they are designed to elicit incriminating testimony. *See Pennsylvania v. Muniz*, 496  
17 U.S. 582, 610 (1990).

18 Under the circumstances here, the officers’ questions about the keys in  
19 Defendant’s possession and where he was staying amount to interrogation. The officers  
20 were investigating the suspected drug activities at the Motel, including in Room 103. They  
21 were asked to stop Defendant because he had been associated with Room 103.  
22 Accordingly, when they asked him about the keys marked with the number “103” found  
23 on his person, they should have known they would likely elicit an incriminating response.  
24 Questions about where he was staying would fall within the same category. The Court  
25 thus finds that the officers’ questions about the keys and where Defendant was staying  
26 are not simple biographical information.



1 Because Defendant was subject to custodial interrogation without first being read  
 2 his *Miranda* rights, the Court will suppress his statements. Accordingly, the Court grants  
 3 Defendant's Motion to Suppress Statements

4 **b. Motion to Suppress Evidence**

5 Defendant further argues that the gun and ammunition found in Room 103 should  
 6 be suppressed because they were obtained in violation of his Fourth Amendment rights  
 7 even though he was a convicted felon on parole at the time. (ECF No. 26.) He more  
 8 specifically argues that officers never confirmed he was subject to a search condition as  
 9 part of his parole (*id.* at 5-6), and even if he was, the officers lacked the requisite probable  
 10 cause that he resided in Room 103 (*id.* at 6-8). The government counters that Defendant  
 11 was subject to a search condition as part of his parole (ECF No. 29 at 3-5), and officers  
 12 had probable cause to believe Defendant resided in Room 103 (*id.* at 5-6).

13 The parties—and the Court—agree that *United States v. Grandberry*, 730 F.3d 968  
 14 (9th Cir. 2013) governs the Court's analysis here. (ECF Nos. 26 at 5-8, 29 at 5.)  
 15 *Grandberry* provides that "[p]olice or parole officers may lawfully conduct searches of  
 16 parolees or their residences without satisfying the Fourth Amendment's warrant  
 17 requirement when certain conditions are met." *Grandberry*, 730 F.3d at 973. Those  
 18 certain conditions are: (1) that the "parolee is subject to a provision authorizing such  
 19 warrantless searches," and also that (2) "law enforcement officers must have probable  
 20 cause to believe that the parolee is a resident of the house to be searched." (*Id.*) The  
 21 Court addresses each condition, in turn, below.

22  
 23 **i. Whether Defendant Was Subject to a Parole Provision  
 Authorizing Warrantless Searches**

24 The Court finds that Defendant was subject to a parole provision authorizing  
 25 warrantless searches. Evans provided un rebutted testimony to this effect at the Hearing—  
 26 that Defendant was subject to the terms of the Parole Agreement even though he was  
 27 approved for transfer to California. As there is no dispute following the Hearing that  
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1 Defendant was subject to a parole provision authorizing warrantless searches, the Court  
2 moves on to the second portion of the *Grandberry* inquiry. See *Grandberry*, 730 F.3d at  
3 973.

4  
5 **ii. Whether Officers Had Probable Cause to Conclude Defendant  
Resided in Room 103**

6 “Probable cause as to residence exists if an officer of reasonable caution would  
7 believe, based on the totality of the circumstances, that the parolee lives at a particular  
8 residence.” *Grandberry*, 730 F.3d at 975 (internal quotation marks, punctuation, and  
9 citation omitted). This is a relatively stringent standard that requires more than a mere  
10 well-founded suspicion—it requires strong evidence that the parolee resides at the  
11 address. See *id.* at 975-76. Further, the Court’s analysis of whether the relevant officer  
12 had probable cause as to residence is guided by a cumulative, fact-intensive analysis of  
13 four factors, specifically whether: “(1) the parolee did not appear to be residing at any  
14 address other than the one searched; (2) the officers had directly observed something  
15 that gave them good reason to suspect that the parolee was using his unreported  
16 residence as his home base; (3) the parolee had a key to the residence in question; and  
17 (4) either the parolee’s co-resident or the parolee himself identified the residence in  
18 question as that of the parolee.” *Id.* at 976 (internal quotation marks omitted).

19 In considering the totality of the circumstances, the Court will address each of  
20 these four factors individually, and then collectively. The first factor—whether the parolee  
21 did not appear to be residing at any address other than the one searched—weighs slightly  
22 in favor of the government. On the one hand, Defendant had absconded from parole, and  
23 Nevada Parole had issued a re-take warrant for his arrest, so in that sense he had no  
24 address. Defendant’s argument that he provided a Sacramento address when he was  
25 paroled is unpersuasive. As Evans testified at the Hearing, the Sacramento address  
26 written on the Nevada Parole report he prepared was probably provided by Defendant  
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1 before he absconded, and should be given little weight. Further, Cholico testified that  
2 Defendant gave him the address of the Motel as his address.

3 On the other hand, the officers who testified at the Hearing all seemed to indicate  
4 that other officers thought Defendant was from Sacramento. And the officers who testified  
5 at the Hearing further testified that Defendant only said he was *visiting* his girlfriend in  
6 Room 103, not that he was staying there.<sup>10</sup> In addition, Cholico did not say Defendant  
7 specifically told him he was living in Room 103 when Cholico asked for Defendant's  
8 residence to complete the probable cause form; Cholico testified that Defendant gave him  
9 a physical address—850 N. Virginia St.—and Cholico was unable to remember whether  
10 this was the address of the Motel. In sum, the evidence before the Court does not  
11 forcefully indicate that Defendant had a residence anywhere besides the Motel, but also  
12 does not clearly suggest he was living there. This factor thus weighs slightly in the  
13 government's favor.

14 However, the second factor—whether the officers had directly observed something  
15 that gave them good reason to suspect that the parolee was using his unreported  
16 residence as his home base—strongly favors Defendant. At the Hearing, the officers  
17 consistently testified that nobody had ever directly seen Defendant enter or exit Room  
18 103—even though officers had been surveilling the Motel for approximately a month and  
19 had seen numerous individuals enter and exit the Motel. Further, Officer Cholico also  
20 testified that other officers had seen the female who was registered to Room 103 exit  
21 Room 103 approximately 20 minutes before Defendant was apprehended, but had not  
22 seen Defendant enter or exit Room 103. This suggests that Room 103 was under  
23 relatively close surveillance,<sup>11</sup> and still nobody ever saw Defendant enter or exit Room

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24 <sup>10</sup>While the Court grants the Motion to Suppress Statements, the Court will  
25 nevertheless assume that the officers may consider Defendants' statements about the  
26 keys to Room 103 in evaluating the *Grandberry* factors.

27 <sup>11</sup>The Court considers government counsel's representation that the surveillance  
28 was conducted on another suspect and was not done around the clock. However,

1 103. Defendant was also not registered to Room 103. In addition, the Motel manger who  
2 lived in the room immediately adjacent to Room 103 told Evans that Defendant was not  
3 living in Room 103 right before Evans decided to search it without a warrant anyway. And  
4 Evans testified that he never tried to track down the female who was registered to Room  
5 103, or interview other Motel residents before authorizing the warrantless search of Room  
6 103. Thus, this factor weighs heavily in Defendant's favor.

7 The third factor—whether Defendant had a key to the residence in question—  
8 weighs in the government's favor. Defendant had at least one key to Room 103 in his  
9 pocket when he was apprehended. Even though the key did not say "Sundance Motel,"  
10 Defendant was apprehended right in front of the Motel, so it is logical to expect that  
11 officers would infer the key worked for Room 103. However, this factor does not weigh  
12 very strongly in the Government's favor. The fact that Defendant had a key to Room 103  
13 is not inconsistent with the explanation he provided to Cholico and Fonoimoana—that he  
14 was visiting his girlfriend who was staying in Room 103. He was also apprehended leaving  
15 the Motel, so perhaps she had given him keys so he could get back into Room 103  
16 whenever he came back from wherever he was going. And all three witnesses  
17 consistently testified at the Hearing that Defendant said he was visiting his girlfriend in  
18 Room 103, not that he was staying or living there. Thus, this factor weighs slightly in the  
19 government's favor.

20 The fourth factor—whether Defendant or his co-resident identified the residence in  
21 question as that of Defendant—weighs in Defendant's favor. Neither Evans nor any of the  
22 other officers at the Motel spoke to, or attempted to speak with, the female registered to  
23 Room 103. Thus, Defendant's purported co-resident never identified Room 103 as  
24 Defendant's residence. Further, Defendant told officers he was visiting his girlfriend in  
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26 Cholico's testimony shows Room 103 was surveilled to such an extent that officers were  
27 able to observe others involved in the suspected drug activities entering and exiting Room  
28 103 during their surveillance, and on the day in question officers observed the female  
staying in Room 103 about 20 minutes before Defendant was observed leaving the Motel.

1 Room 103, not that he was staying there. Officers also seemed to think he was from  
2 Sacramento. But Cholico did testify that Defendant gave him the address of the Motel  
3 when Cholico was completing a form later in the evening he was apprehended. Evans  
4 also put in his Nevada Parole report that Defendant was unable to provide a local address.  
5 Thus, this factor only weighs slightly in Defendant's favor.

6 Considering the totality of these circumstances, the Court finds that the  
7 government has failed to meet its burden here. An officer of reasonable caution would  
8 simply have not had probable cause to believe Defendant lived in Room 103 given the  
9 information available at the time of the search. Most notably, the Motel and Room 103  
10 were under surveillance for about a month—including minutes before Defendant was  
11 apprehended—and no officer ever directly saw Defendant enter or exit Room 103.  
12 Further, the Motel manager—who would know who was living in the room next door to  
13 their own—told Evans that Defendant was not living in Room 103. And the fact that  
14 Defendant had at least one key to Room 103 on him when he was apprehended is  
15 consistent with what he told Cholico and Fonoimoana—that he was visiting his girlfriend  
16 in Room 103. The fact that Defendant did not clearly have another residence somewhere  
17 else is outweighed by these other factors.

18 Therefore, the Court will grant Defendant's Motion to Suppress Evidence. See  
19 *Grandberry*, 730 F.3d at 975-80. The Court will thus suppress the fruits of the warrantless  
20 search of Room 103, including the gun and the ammunition that led to Defendant's  
21 indictment here.


#### 22 **IV. CONCLUSION**

23 The Court notes that the parties made several arguments and cited to several  
24 cases not discussed above. The Court has reviewed these arguments and cases and  
25 determines that they do not warrant discussion as they do not affect the outcome of the  
26 Motions before the Court.

1 It is therefore ordered that Defendant's motion to suppress evidence (ECF No. 26)  
2 is granted. The gun and the ammunition are suppressed, along with any other fruits of the  
3 warrantless search of Room 103.

4 It is further ordered that Defendant's motion to suppress statements (ECF No. 27)  
5 is granted. Defendant's statements made to Cholino and Fonoimoana after Fonoimoana  
6 handcuffed him are suppressed.

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8 DATED THIS 11<sup>th</sup> day of February 2019.

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12 MIRANDA M. DU  
13 UNITED STATES DISTRICT JUDGE  
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